IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/12/2002

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THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION NO.1770 of 1995
and W.P.Nos. 2208, 4318,4319,4320 and 5093 of 1995

W.P.No.1770 of 1995

The Bombay Burmah Trading Corporation Ltd.,
Singampetti Group,
Manjolai,
represented by its Legal Adviser ..... Petitioner.

-Vs-

1. The Deputy Director,
Project Tiger,
Mundanthurai
Kazhakadu Sanctuary,
Ambasamudram,
Nellai Kattabhoman District.

2. The Field Director (Project Tiger),
Conservator of Forest,
62, James Cottage,
Tirunelveli - 627 007. ..... Respondents.

Petitions filed under Article 226 of the Constitution of India
praying for the issue of writs of certiorarified mandamus as stated therein.

For petitioner in : Mr.S.Gopalaratnam,
all cases. Senior Counsel
for V.Achuthan.

For respondents in : Mr.V.S.Sethuraman,
all cases. Special Government Pleader.

:ORDER

The Subject matter of these writ petitions is long pending
with a chequered history and will probably continue to be so for some more
time in view of the pendency of the proceedings before the statutory

authorities at various stages under the Tamil Nadu Forest Act, 1882, hereinafter described as "the Forest Act".

2. The petitioner is a Company incorporated under the Companies Act. The land in question comprises an extent of 3388.78 acres, which was part of Singampatti Zamin. By lease deed dated 12.2.1989 the Zamin granted the right to occupy in favour of the petitioner company for the purpose of cultivating Coffee, Tea, Coco, Sincona, Cardamom, pepper, rubber and other products other than timber trees for a period of 99 years. With the coming into f`orce of the Tamil Nadu Estates (Abolition and conversion of ryotwari) Act, hereinafter called Act 2 6 of 1948, the Board of Revenue by is order dated 13.8.1958 declared that the Company was not entitled to any rights or to remain in possession after 19.2.1952. The Board in exercise its power under Section 19-A of the said Act, directed that the lessee/petitioner shall remain in possession of the entire lease area for the rest of the lease period

subject to all the conditions of lease. Certain additional terms and conditions were subsequently added alleged to be in public interest, as follows:-

" (i) The company shall not clear any portion of the catchment area of Kusanguli measuring 970 acres at the south east corner the lease area within the boundaries indicated by thick red line in sketch attached, as the clear felling of this area will be detrimental to forest conservancy and will also lead to soil erosion in the catchment area of the Manimuthar River;
(ii) the said company shall, in the rest of the area leased out to it, arrange to clothe rapidly with vegetations any extent cleared by it and adopt and maintain effective measures for the prevention of soil erosion; and
(iii) notwithstanding anything to the contrary contained in the lease deed dated 12.2.1989, as subsequently amended, if the Company violates any of the terms and conditions of the lease and does not conform to the conditions (i) and (ii) specified above, the lease is liable to be cancelled by the State Government and the State Government may re-enter and take possession of the entire lease area and the Company will not be entitled to any compensation whatsoever thereof."

3. In the mean time, the Government also invoked its power under the Forest Act and issued a proclamation under Section 6 expressing its intention to declare the area as reserved forest. The petitioners filed a Claim petition as provided under the Act and claimed rights of occupancy, ownership and other rights. The Forest Settlement Officer split the claim into two separate petitions namely, Claim No.5 as regards the claim of right of occupancy and Claim No.6 relating to the other rights such as right of way, etc. The Forest Settlement Officer allowed the claim of right of occupancy as claimed by the petitioner and excluded the land from the limits of the proposed reserved Forest. The Government filed an appeal. The learned District Judge, Tirunelveli, allowed the appeal and remitted the proceedings to the Forest Settlement Officer on the ground that the Department did not have the opportunity for filing their counter statement. Both sides now represent that the proceedings are still pending before the Forest Settlement Officer. It is also admitted by the respondents that in view of the pendency

of the proceedings on the Claim petition filed by the petitioners, no notification has been issued under Section 16 of the Forest Act declaring the forest as reserved forest.

4. As stated earlier, the Board of Revenue by order dated 13.8.1958 , under Section 19-A of Act 26 of 1948, recognised the right of the Company to remain in possession of the land till the end of the lease period subject to the conditions of lease and had also imposed certain other conditions as extracted above. This was followed by execution of supplemental lease agreements between the Government and the Company on various dates, namely, 31.12.1951, 1.12.1966, 16.8.1973 and 3.10.1981. Certain new conditions were added and last of the agreement dated 3.10.1981 stipulated that the lessee shall not clear any growth of trees in the area mentioned thereunder of an extent of 343.18 hectares and a corridor of a length of a mile along the eastern side of Manimuthar river and the lessee should not violate any of the conditions in the principal lease deed and the conditions subsequently stipulated failing which the lease was liable to be cancelled without entitlement for compensation.

5. The above writ petitions are directed against some of the actions taken by the Government/Forest officials alleging that the petitioners/Company was violating the terms of the lease and the conditions imposed by the Government subsequently and that the Company had resorted to indiscriminate felling of the trees and doing acts of endangering the ecology of the forest area and endangering life which require protection. The following are the reliefs prayed for in the respective writ petitions:-
(i) In W.P.No.1770 of 1995 the petitioner questions the action of the Government collecting toll for the entry into the estate and usage of the Board within the Estate which were in fact laid by the Company.
(ii) W.P.No.2208 of 1995 is to restrain the respondents from exercising the powers under Chapter II of the Forest Act and the provisions of the Wildlife Protection Act.
(iii) In W.P.Nos.4318 to 4320 of 1995, the petitioner is aggrieved by the seizure of firewood which were effected by the Forest officials under Mahazars dated 14.3.1995 and 15.3.1995. The Company seeks for certiorari to quash the said Mahazars and for directions to release the firewood which had been allegedly seized illegally.
(iv) In W.P.No.5093 of 1995, the Company has prayed for a declaration that Section 49-A to 49-G of the Forest Act are ultra vires Constitution of India.

6. It is not necessary to deal with the pleadings by both sides in each of the writ petitions as the legal issues raised by the parties are one and the same. The necessary factual details can be referred to if necessary while dealing with t ve writ petitions. The main contention which has been raised in all the writ petitions is that the proceedings under the Forest Act are not concluded as the claims under the Act by the petitioner/Company are pending before the Forest Settlement Officer and no declaration had been issued under Section 16 of the Act. As such the respondents cannot seek to enforce any of the provisions under the Act. Nor can they invoke the Protection of the Wildlife Act, 1972. The various actions

of the respondents which are impugned are without jurisdiction and in excess of the power available to them. The factual background of such action alleging any violation by the petitioner of the provisions of the Forest Act and Wildlife Protection Act are factually incorrect and the actions of the Forest officials are illegal, vindictive and causing great inconvenience and hindrance to the administration of the petitioner company.

7. Per contra, in the counter affidavit filed by the Government it it is contended that the Estate having been taken over under Act 26 of 1948, the Government has become the proprietor of the land and due notifications have been issued under the Forest Act to constitute and to include the lands in the reserved forest area. Hence, the provisions of the Forest Act and Wildlife Protection Act have to be strictly implemented. The said provisions have been invoked in public interest for the protection of the forest ecology and preservation of rare species of animals and birds. The petitioner had been indulging in indiscriminate felling of trees and carrying out activities which are detrimental to the forest ecology and endangering the animals and birds.

8. In the above background, Mr.S.Gopalaratnam, learned Senior Counsel for the petitioner, has raised the following questions for consideration:
(A) The notification issued under Section 19-A of Act 26 of 1948 is not valid due to several reasons. Firstly, the order proceeds on a misconception as though the land leased to the petitioner by the Zamindar was a forest land. The land was not a forest land as could be seen from the agreement dated 12.2.1929. Secondly, Section 19-A would apply only to non-ryoti land and the lands in question are ryoti lands. Thirdly, even if the lease is to be held as only for nonagricultural purpose, under Section 19, the lessee was entitled to be in possession of the land subject to payment of assessment or ground rent. Fourthly, the order was issued without any notice or hearing of the petitioner and such unilateral exercise of powers was void ab initio. The said order deserves to be ignored and it is not necessary for the petitioners to question the same by separate proceedings.

(B) The rights of the petitioner if traced in terms of the provisions under the Tamil Nadu Estates Land Act 1 of 1908 and Act 26 of 1948 , would signify that the rights of the petitioner are not merely that of a lease holder for a specified period. Having regard to the definition of the expressions "agricultural land holder" "private land" and "ryoti land" as defined under Act 1 of 1908, certain valuable rights have accrued in favour of the petitioner such as the right of occupancy of ryoti land (Section 6) and other rights to the land holder in possession of the ryoti land including permanent right of occupancy. Reference is also made to the mining right given to the petitioner under the lease deed. Under the provisions of the Act 26 of 1948 the petitioner is a statutory tenant and is also entitled to the grant of patta. Therefore, the order dated 13.8.1958 limiting the right of the petitioner to be in possession only up to the end of the lease period is illegal.

(C) The disputed area is not a forest area. The entire area

was only a vacant land without any forest growth and leased out only to raise plantation crops, coffee, tea, cardamom, etc. The area cannot also be included or declared as a reserve forest as they are not lands in possession or at the disposal of the Government. Hence, the said lands cannot also be subject matter of a notification either as a sanctuary or as a reserved forest. In the counter filed by the respondents in W.P.No.1770 of 1995, the petitioner's contention that the land was not at the disposal of the Government had been ignored and had not been denied.

(D) Admittedly, an enquiry into the claims of the petitioner under Forest Act was pending and unless and otherwise the land is declared finally to be at the disposal of the Government and final declaration is made under Section 16 declaring the area as reserved forest, the Forest officials cannot seek to enforce the provisions of the Forest Act. Reliance placed on Section 26 of the Forest Act and the Rules made thereunder for preventing any damages being caused to the trees even in areas which had not yet been declared as reserved forest, was not available in the present case for the following reasons:-
The estate was earlier under the management of Court of Wards in view of the proprietor being a minor at that time. The provision of Section 26 and the Rules made thereunder were extended to and made applicable to the Zamin Estate only as long as the Zamin was under the management of Court of Wards. The estate was no longer under the management of Court of Wards and hence Section 26 will not apply to the petitioner's estate.

(E) The various complaints and allegations against the petitioner as indulging in violation of the forest ecology etc. have no basis at all and such allegations have been made in a vindictive manner. The complaints filed against the petitioner company had been dismissed by the Criminal Courts. The respondents are trying to pressurise the Company through penal provisions by resorting to false allegations.

9. Per contra, learned Government Pleader contends that in these writ petitions, the petitioner cannot be heard to raise any contention as regards their alleged rights under Act 1 of 1908 or Act 26 of 194 8. The rights if any, had become superseded and extinguished after the order passed by the Government under Section 19-A of Act 26 of 194 8. The said order had been passed as early as 13.8.1958 and till date, the petitioner had not taken any steps questioning the said order. On the contrary, the petitioner had accepted the position of the land being vested with the Government and had subsequently executed supplemental agreements. Therefore, the plaintiff is not entitled to any claim of permanent occupancy. After the order under Section 19-A had been passed, the land is vested with the Government and the petitioner had only a permissive right to occupy subject to the conditions imposed by the Government.

10. Though a declaration under Section 16 of the Forest Act, had not been issued, Section 29 enables the Government to issue notification for regulating or prohibiting activities of clearing up of any forest land for cultivation or doing any act which will endanger the ecology or result in endangering the protected species of animals and birds. Learned Additional

Government Pleader also took me through the statement of facts contained in the various counter affidavits filed in the above writ petitions dealing with the factual background alleging several commissions and omissions against the petitioner/Company of violating conditions of lease and violations of the provisions of the Forest Act and Wildlife Protection Act. The provisions of Wildlife Protection Act are applicable to the lands under the occupation of the petitioner. Reliance is placed on the judgment of the Supreme Court in T.N.G.THIRUMALAPAD v. UNION OF INDIA (1997 (2) S.C.C., 267) in support of the contention that notwithstanding the applicability or otherwise of the provisions of the various Statutes regulating the activities in forest areas and dealing with the Wildlife, specific directions have been issued to the Tamil Nadu Government banning and placing restrictions on the movement of and cutting of trees and timber and such directions have to be obeyed.

11. Reference is also made to the judgment of P.Sathasivam,j. in W.P.No.4178 of 1995 filed by the petitioner/Company dated 5.11.1999. According to learned Additional Government Pleader, the points raised hereunder and the reliefs prayed for in these writ petitions were raised in that writ petition also and the learned Judge had rendered certain findings and issued directions which are binding on the petitioner and would also operate as res judicata. It is not open to the petitioner to raise those issues again.

12. In reply Mr.Gopalaratnam, learned Senior Counsel contended that the petitioner's land was not part of or included in the Kalakadu reserved forest. A perusal of G.O.Ms.No.183 Forest Department dated 6.3.1976 would reveal that the said notification under Section 18 of Wildlife Protection Act notifying the reserved forest as a sanctuary for protection of Wildlife did not at all relate to the petitioner's land. The name of the Taluk is given as Nanguneri while the petition/ properties is situate entirely in Ambasamudram Taluk. The northern boundary is given as Ambasamudram Taluk and hence, the G.O. is not applicable to the petitioner's land.

13. Learned Senior Counsel also contended that apart from the fact that in the agreement executed by the Zamindar also there is no reference to any forest, there can be no presumption that a land adjoining a forest land should also be a forest land, vide the judgment of a Division Bench of this Court in A.KARUPPAN SERVAI v. STATE OF MADRAS (85 L.W.71).

14. With reference to the order under Section 19-A of the Act 26 of 1948 dated 13.8.1958, passed without notice to the petitioner, learned Senior Counsel referred to the landmark judgment of the House of Lords in RIDGE v. BALDWIN AND OTHERS (1963 (II) All. E.R., 66) in support of his contention that the Rules of audi alteram partem is one of the first principles of justice and non-compliance of the same would render such decisions as null and void.

15. Reference was also made to the judgment of the Supreme Court in NAWAB KHAN v. STATE OF GUJARAT (A.I.R.1974 S.C., 1471). The Supreme Court held that an order which infringes the Rule of audi alteram partem is a nullity and such an order which is void may be directly and collaterally

challenged in subsequent legal proceedings.

16. For the same proposition, reference was made to the judgment of Ratnam,J. as he then was, in SUNDARARAJAN v. EDUCATIONAL SOCIETY, TIRUNELVELI AND OTHERS (97 L.W., 410).

17. Reference was made to the judgment of a Division Bench of this Court in KATHIRVELSAMY NAICKER v. SULTAN AM B.. & OTHERS (1946 (II) M.L.J., 371), relying on the observation that the word "agriculture" in Act 1 of 1908 would include culti lantation crops also, as the said expression would include horticulture as well.

18. On the issue of rights of ryots/persons inducted into possession of lands for cultivation, learned Senior Counsel relied upon the observation of the Division Bench in K.GOPALSAMY IYENGAR v. SRI ADMANATHA SAMI DEVASTHANAM, THIRUVAVADUTHURAI (1957 (I)M.L.J., 104) holding that the land which can be cultivated systematically will be cultivable lands and they must be deemed ryoti until contrary was proved.

19. On the appeal filed against the same judgment, in SRI ADMANATHASAMI DEVASTHANAM v. GOPALSAMY IYENGAR (1964 (I) M.L.J., 42) the Supreme Court while dismissing the appeal, held that the land which can be brought under cultivation was a cultivable land, and will be ryoti land under

Section 3(16) of the Estates Land Act and where a person has been let into possession of such lands, he will acquire permanent rights of occupancy under Section 6 of the Act.

20. Natesan,J. expressing similar views held in K.L.RAMAMOORTHY AND OTHERS v. STATE OF MADRAS (I.L.R. 1970 (II) Madras, 788) held that the interest of a ryot in the land in the Estate is separate and distinct and he is a co-owner and is occasionally stated to be a coparcener with the landlord. He is not given any compensation as his ownership of 'Kudiwaram' is not affected by taking over of the Estate.

21. In MARIABAKKIAM AMMAL & OTHERS v. DISTRICT FOREST OFFICER, DINDIGUL (1990 (II) L.W., 478) S.T.Ramalingam,J. had occasion to consider and deal with a case of notification under Section 4 of the Forest Act, 1982 and held that in respect of the lands to which the provisions of Act 26 of 1948 was applicable, the mere failure to obtain patta will not change the character of ryoti land and it will continue to be ryoti land under Act 26 of 1948.

22. Learned counsel would also further contend that the right of the petitioner to question and establish his title to the property was in tact and very much available to the petitioner. In SRI-LA-SRI SIVAPRAKASA PANDARAM v. T.PARVATHI (1998 (II) L.W., 188), the Supreme Court held that under the provisions of Tamil Nadu Minor Inam (Abolition and Conversion of ryotwari) Act, 1963, the Civil Court's jurisdiction to adjudicate title of the property was not barred by the provisions of the said Act.

23. Following the said judgment, a Full Bench of this Court in SRINIVASAN & SIX OTHERS v. SRI MADYARJUNAESWARASAMY (1998 (II) L.W., 189) held that a careful analysis of the provisions of the Abolition Laws will show that the vesting on abolition is subject to the preexisting rights of the occupants. It was further held that the scheme underlying the provisions of the Act dealing with the nature of the rights, the manner in which the authorities were entitled to adjudicate such rights and the consequences of such adjudication would disclose that it is not meant to be a substitute or alternate mode of resolution of the ordinary Civil right of the citizen in their attempt to project claims for patta.

24. In STATE OF TAMIL NADU v. RAMALINGASWAMIGAL MADAM (1985 (4) S. C.C.,10) which was an appeal as against the judgment of this Court in K.L.M.RAMAMURTHY v. STATE OF MADRAS (I.L.R.1970 (2) Madras, 788), the Supreme Court held that the Settlement Officer's decision regarding grant or refusal to grant ryotwari patta in respect of a land would not bar or exclude Civil Court's jurisdiction to determine the nature of the land.

25. The above stated statement of facts and submissions of both sides give rise to the following points for consideration:-
(I) Whether the petitioner has the right of permanent occupancy arising out of Act 1 of 1908 and Act 26 of 1948, notwithstanding the specific period of tenancy agreed between the Zamindar and the petitioner/Company and whether the order of the Government under Section 19-A of Act 26 of 1948 dated 13.8.1958 is valid and would disentitle the petitioner to claim such rights?
(II) In the absence of a declaration under Section 16 of the Forest Act, is it open to the respondents to seek to enforce the provisions of the said Act?
(III) Whether the provision of the Forest Act 1882 and Wildlife Protection Act, 1972 are enforceable as against the petitioner?

26. Point No.I:- On this issue though elaborate arguments were advanced on behalf of the petitioner and contended that under the provisions of the Act 1 of 1908 and Act 26 of 1948 the petitioner/Company is entitled to ryotwari patta and even in the absence of ryotwari patta is entitled to permanent occupancy rights and as regards the validity of the order passed by the Government under Section 19-A of Act 26 of 1948, I am inclined to hold that this issue does not arise for consideration in the above writ petitions. The scope of the prayer as well as the pleadings in these writ petitions are restricted, namely, to what extent the provisions of the Forest Act and Wildlife Protection Act could be enforced, whether toll could be collected etc. A perusal of the pleadings/affidavit in support of the writ petitions would also disclose that no such points relating to this issue have been taken. It is only in the reply affidavit filed by the petitioner in W.P.2208/1901 there is an attempt to demur that the petitioner being a cultivating tenant/ryot would be entitled to patta in view of the provisions under Act 26 of 1948. I did hear elaborate arguments on this issue for two reasons. The first reason is personal in wishing not to loose an opportunity for myself to learn and scan the fascinating depths of the Tenure laws and Abolition laws by expert guidance and secondly to assess the extent to which the subject would have a bearing on the provisions of the Forest Act and the

reliefs sought for in these writ petitions.

27. Suffice it to say that in these writ petitions, neither the proceedings under Act 1 of 1908 nor Act 26 of 1948, if any, are called in question. It is also pertinent to note that the authorities under the said two Acts have not been impleaded as parties in these writ petitions, and as such no enquiry can be contemplated nor any relief be granted in their absence. The respondents herein are not the appropriate authorities to deal with the issues which could be raised under those two Acts. For the aforesaid reasons, as regards Point No.1, the same does not arise for consideration in these writ petitions. The issue is left open to the petitioners, if the remedy is still available to them in a manner known to law, to be agitated before the appropriate forum. I am not therefore, referring to any of the submissions or the rulings relied on in the said context. I am also unable to entertain the contention that the order under Section 19-A of the Act was a nullity and therefore, it was not necessary to seek for any declaration and that such order could be questioned in a collateral proceeding as between the same parties. Even assuming that the said order is a nullity, in this case, though the respondent herein as well as in a proceeding under Act 1 of 1908 and Act 26 of 1948 will be only the State of Tamil Nadu, yet in the absence of the necessary parties, namely the authorities under the said two Acts, it will not be possible to adjudicate any issue or issues arising thereunder.

28. For the aforesaid reasons, as regards Point No.1, the same does not arise for consideration in these writ petitions. On the same reasons, it is also not necessary to consider the questions as to whether Section 19 and 19-A of Act 26 of 1948 enjoy the protection of Article 31-B of the Constitution for the reason that Tamil Nadu (Madras) Act 44 of 1956 by which Section 19 was amended, had not been added to the IXth Schedule to the Constitution.

29. Point No.II & III: The Scheme of Chapter II of the Forest Act shows that the Government has the power to constitute any land at the disposal of the Government as a Reserved Forest. The expression " land at the disposal of the Government" is defined under Section 2 of the Act, as follows:-

"Land at the disposal of Government:- "Land at the disposal of Government" includes all unoccupied land, whether assessed or unassessed; but does not include land, the property of land-holders as defined by section I of Act VIII of 1865, (Tamil Nadu) (namely), all persons holding under a sanad milkiyatistimrar; all other zamindars, short riyamdars, jagirdars; inamdars and all persons farming lands from the above persons or farming the land revenue under Government; also all holders of land under riyotwar settlements, or in any way subject to the payment of land-revenue, direct to Government and all other registered holders of land in proprietary right;"

30. A perusal of the definition discloses that an occupied land cannot be brought under the definition. Various other categories of lands are also excluded inclusive of land held by persons who are cultivating the lands from zamindars, short riyamdars, Jagirdars, Inamdars and land which

is subject to payment of land revenue. Therefore, it is for the Forest Settlement Officer to go into the entire issues and find out whether it is a land at the disposal of the Government or not. But, the scheme of the Act does not appear to restrict the power of the Government also to bring all lands other than the lands at the disposal of the Government for the purpose of constituting a Reserved Forest. Even the lands over which an individual may have ownership or occupancy right can also be included and constituted as a Reserved Forest. This would however be subject to such person making a claim before the Forest Settlement Officer under Section 8, who will conduct an enquiry under Section 9. Under Section 10 he shall deal with such claims and Forest Settlement Officer could either come to an agreement with the claimant for the surrender of his right or exclude the land from the limits of the proposed reserved forest or to proceed to acquire the same under the provision of the Land Acquisition Act. This would imply that even if the land is not at the disposal of the Government and is a land over which an individual has proprietary or occupancy rights, such land could also be taken over by payment of compensation as provided under the Land Acquisition Act. After the claims are adjudicated by the Forest Settlement Officer and by the Appellate Authority (District Judge) if there is an appeal, and if the period for filing claims had lapsed, a notification has to be issued under Section 16 declaring the area/ forest as Reserved Forest. These provisions would imply that unless a declaration is issued under Section 16, the land in question cannot be treated as a Reserved Forest. Consequently, the provisions of the Act vesting control over the area on the Forest Department to invoke penal provisions etc. could be enforced only after a declaration is issued under Section 16. Admittedly, in these cases, enquiry into the claims of the petitioner has not yet been completed and no declaration has also been issued under Section 16. In this back ground we have to see what is the extent to which the Government/Forest Department can seek to exercise any control over the land in dispute and whether actions taken by the Government in these cases which are impugned in these writ petitions could be sustained.

31. As regards the supervisory power and penal provisions envisaged under Chapter II, III and IV of the Act in the case of Reserved Forest, or lands proposed to be constituted as Reserve Forest, it is obvious that the said provisions cannot be invoked in respect of areas which have not been declared under Section 16 of the Act. The said provisions can be applied only to the areas declared as Reserved Forest. But Chapter V contemplates power being vested with the Government to have control over the Forest land which are not at the disposal of the Government, for regulating, preventing, breaking up or clearing the forest area for the purpose of cultivation and impose restrictions in order to ensure protection against storms, rolling stones, floods, avalanches for the preservation of soil on the ridges and slope and for prevention of land slip, land erosion for maintenance of water supply in springs, rivers and tanks, for the protection of the roads, bridges, railways and other lines of communications etc. Such power can be exercised even in respect of lands not declared as Reserve Forest. The Government is given the power to direct the owners of such land to comply with the said directions and instructions and in the event of the owner not complying with or violating such instructions, under Section 30, the Government can take over such land either on lease or acquire the land. It is significant to note that

no other form of control or penal action or imposition of penalty is contemplated under Chapter IV, if there is a violation of the instructions and directions by the Government. Another pre-requisite to invoke Chapter IV, is that there should be a notification in the Official Gazette of the concerned Districts bringing the land under the coverage of Chapter IV. No contention was raised before me by the respondent claiming any such notification having been issued under Section 29 of the Forest Act in respect of the petition lands. Nor was any Government order in the said context was placed before me. A compendium of the Government Orders were filed by the respondents during the course of argument, only in the context of declaring Kalakad Reserved forest as a Wildlife Sanctuary to which reference would be made later. It is true that during the year 1937 on the request of the manager of the Singampatti Estate which was at that time under the management of Court of Wards while the Proprietor/Zamindar was a minor, the Government issued Notification dated 23.8.1937 under Section 26 of the Act extending the provisions of that Section to the petitioner land. But as the notification itself had made it clear it shall remain in force so long as the estate was under the management of Court of Wards. There is also no dispute over the fact that the control by Court of Wards ended as on 29.4.1952. Therefore, the notification dated 23.8.193 7 under Section 26 of the Act cannot be relied upon by the Government to exercise any control either under Chapter III or Chapter IV of the Act.

32. The other Chapters under the Forest Act deal with the power of the Government to control and regulate transit of timber, prohibition of import and export of timber, possession of sandalwood, disposal of timber etc. These provisions would appear to govern all types of lands private or lands at the disposal of the Government. The applicability of Chapter V does not depend on the declaration to be made under Section 16 declaring the area as Reserve Forest. Further, under Section 54 of the Act, operation of other laws are not barred and there is no bar for prosecuting a person under any other law in force constituting a forest offence.

33. Even otherwise, the directions and guidelines issued by the Supreme Court in 1997 (2) S.C.C., 267, supra, would apply to any forest irrespective of the ownership especially in the context of Tamil Nadu. That decision was rendered after the filing of these writ petitions. It is not known as to whether the State Government had constituted the Committee to identify the areas/forest which require to be regulated and controlled. The Supreme Court had also stated that there will be a complete ban on the felling of forest trees in all the forest area.

34. The next question which arises for consideration is as regards the applicability of the provisions of the Wildlife Protection Act, 1 972. The Government mainly relies on G.O.Ms.No.183 Forest Department, dated 6.3.1976 declaring Kalakad reserved forest as a Wildlife Sanctury and G.O.Ms.No.28, Environment and Forest Department, dated 5.1.1989 sanctioning continuance of Kalakadu - Mundanthurai Tiger Reserved Scheme,known as "Project Tiger" and according to the Government the petitioner's lands are therefore, covered by the provisions of the Wildlife Protection Act.

35. A perusal of Central Act 53 of 1972 presents no

difficulty as regards the right of the Government to declare by notification to constitute any area other than the area comprised in a reserved forest, for the purpose of protecting, propagating Wildlife or its environment. Therefore, the provisions are similar to those of under Forest Act whereby in the context of the rights of the owners/occupants, their claims are to be determined by the Collector after due enquiry under Section 22 of the Act. Then the process has to be followed by a final declaration of the area as a Sanctuary under Section 26-A of the Act. At this stage, it may be mentioned that it is not the case of the Government that any final declaration has been issued under Section 26-A of the Act. Only a notification under Section 18 of the Act, has been issued.

36. The above is the legal background in which the reliefs as prayed for in each of the writ petitions has to be examined in the light of the facts disclosed by both sides.

W.P.No.1770 of 1995:

37. In this Writ Petition the petitioner has prayed for quashing the letter by the Deputy Director "Project Tiger", Ambasamudram, dated 17.1.1995, calling upon the petitioner to explain how toll charges were collected by the petitioners and informing the petitioner that a Board has been erected by the petitioners near Thalayanai had been removed as the area came within "Tiger Project" area owned by the Government.

38. To adjudicate upon the claims made by the Government, it is necessary to find as to whether a proper declaration either under the provisions of the Tamil Nadu Forest Act or under the Wildlife Protection Act had been issued, so as to enable the respondents to exercise any power or control over the petitioner's land. The facts analysed above will disclose that the enquiry under Chapter II of the Forest Act has not been completed and no declaration has also been made under Section 16 of the Act. Therefore, the Forest Department cannot seek to exercise any control over the disputed property as a Reserved Forest. It is not sufficient for the Government to keep on expressing their anxiety or concern to protect the forest wealth or to preserve the wild animals and taking control over the areas which are required for preservation of the ecology. The Act provides wide power to the Government to take over such areas subject to payment of compensation in the case of the lands over which a claimant under Section 8 may have right of occupancy or of ownership. There is no explanation by the Government as to why there is unnecessary delay in concluding the enquiry under Chapter II and to issue a declaration under Section 16. Without doing so, it is clear that the Government cannot seek to exercise any control over the property, other than the power which could be exercised under Chapter V or in terms of the directions of the Supreme Court in 1977 (2) S.C.C., 267, or in terms of the agreement between the petitioner and the Government.

39. In the context of the right to collect toll, as against the assertion of the petitioners, that all the roads inside their area were laid by them at their cost, there is no specific denial by the respondents. The only claim by the respondents is that the roads which are subjected to imposition of toll, now belongs to the Government. This controversy between

the parties is really meaningless. The area held on lease by the petitioner/company is well defined under the lease deed. No controversy has been raised over the identity of the area entrusted to the petitioner/company under the lease deed. If the roads had been laid by the lessee and if the roads are within their lease hold area, they are entitled to collect toll and the Government cannot prevent them from doing so unless and otherwise the entire estate has been taken over by the Government as a Reserved Forest after due declaration under Section 16 of the Act. Till then, the Government cannot seek to enforce such a right either to collect toll by themselves or to prevent the petitioner from collecting toll. Even in the context of the claim by the Government that the Estate had become vested with them and the land is claimed to have become Government property by virtue of the notification issued under Section 19-A of Act 2 6 of 1948 dated 13.8.1958, the rights of the lessees/petitionercompany to be in possession of the property is admitted and allowed to subsist till the completion of the period of lease, subject only to a series of supplemental agreements executed between the Government and the petitioner. It is not the case of learned Additional Government Pleader that any of the supplemental lease agreements stipulate that the lessee shall not collect toll charges for the roads which the lessee had laid at their own expenses. Apart from the claim of the petitioners that they had laid the roads at their own expense, it is further claimed that even as on date they are maintaining the roads at their own expense. These contentions are not denied by the respondents. The fact that the petitioners were enabled to lay the roads by themselves is also clear from the lease deed dated 12.12.1929. Likewise, there can be no interference with the right of the Government to collect toll in respect of the roads laid by them and which do not fall within the area covered under the lease in favour of the petitioner.

40. As stated earlier, the attempt on the part of the Government to interfere with the right of the petitioner to enjoy the property in a peaceful manner subject only to any restriction which may be contained under the agreement and supplemental agreements, cannot at all be appreciated in the absence of a declaration under Section 16 of the Act.

41. As regards the controversy as to whether G.O.Ms.No.183 Forest and Fisheries Department dated 6.3.1976 approving the proposals of the Chief Conservator of Forest to notify Kalakadu Reserved Forest as a sanctuary for the protection and development of Wildlife, in the said Government Order also, the negligence on the part of the respondents is apparent. The positive assertion of the petitioner is that their estate is comprised only within Ambasamudram Taluk in terms of the lease deed in their favour and also the supplemental agreements. But the schedule attached to the said Government Order (G.O.183) and the boundary description thereon also appear to be limited to areas within Nanguneri Taluk alone. Ambasamudram area is described as the northern boundary. No explanation is forthcoming as to how the said notification can be applied to the lands in the possession of the petitioner-company. This goes to the root of the matter as regards the applicability of the said Government Orders issued under Section 18(1) of the Wildlife Protection Act, 1972, which is claimed by the Government as being applicable to petitioner's land. Apart from the description of the property in the schedule and the boundary description, the very coverage of the

notification appears to be limited to " Kalakadu Reserved Forest". When admittedly no declaration has been issued under Section 16 of the Forest Act, it is impossible to treat the petitioner's land as a Reserved Forest.

42. It is further relevant to point out that it is not the contention of the Government that any declaration has been issued under Section 26-A of the Wildlife Protection Act. As I had mentioned earlier, the declaration to be made under Section 26-A is similar to the declaration to be made under Section 16 of the Forest Act. No contention has been raised before me regarding any declaration having been issued under Section 26-A of the Act with reference to the petitioner's land. The expression "sanctuary" has been described under Section 2(2 6) of the Wildlife Protection Act as an area declared under Section 2 6-A or 38 or deemed under Section 44(3) to be declared as Wildlife Sanctuary. No such declaration by the Government under Section 38 of the Act has been brought to my notice.

43. There appears to be yet another anomaly in the declaration issued under Section 18 of the Wildlife Protection Act. A perusal of Section 18 of the Act shows that the provision is contemplated only for areas other than the reserved forests. A perusal of the Government Order dated 6.3.1976 shows that it is intended only to cover Kalakadu reserved forest. This anomaly coupled with the vague and incorrect description of the property in the Schedule and the Boundary description is to the advantage of the petitioner. It is also seen that in the notification under Section 6 of the Forest Act published in the Gazette dated 15.2.1978 also, petitioner's property is shown as situated in Ambasamudram Taluk.

44. Therefore, I am inclined to hold that the impugned order is liable to be quashed, considering that no declaration has been issued either under Section 16 of the Forest Act or under Section 26-A of the Wild Life Protection Act. However, as observed earlier, Chapter V of the Forest Act is very much applicable. Likewise, as far as Wild Life Protection Act is concerned, though I have held that the claim that the petitioner land had been notified as a Sanctuary cannot be sustained, yet, other provisions if any, which would apply generally to areas other than sanctuaries, would apply to the petitioner's land.

W.P.No.2208 of 1995:

45. In this Writ Petition the petitioner prays for the issue of a writ of mandamus to forbear the first respondent from exercising the powers under Chapter II of the Forest Act and the provisions of the Wildlife Protection Act, 1972 to the areas covered under the proclamation dated 12.4.1978 issued under Section 16 of the Forest Act.

46. There appears to be a mistake in the second part of the prayer namely, "proclamation dated 12.4.1978 under Section 16 of the Tamil Nadu Forest Act". Probably it refers to proclamation under Section 6 of the Act.

47. As far as the prayer to forbear the respondents from exercising the powers under Chapter II of the Tamil Nadu Forest Act is

concerned, I am inclined to hold that the petitioner is not entitled to maintain such a relief. There cannot be a mandamus to restrain a statutory or public authority from discharging their mandatory duties under an Act of Legislature. No case is also made out by the petitioner to sustain such an extraordinary relief as prayed for by the petitioner.

48. No public authority can be restrained from performing their legal duties envisaged under an Act. If any action thus taken by the concerned authority is violative of any of the statutory or Constitutional provisions, it is always open to the aggrieved person to question the same in accordance with law. More over, the enquiry under the provisions of the Chapter II of the Forest Act is under progress and there is no justification for stalling proceedings. The rights of the petitioners are adequately ensured considering that the petitioner has every right to project their grievances before the Forest Settlement Officer, before whom the enquiry is at present pending. The petitioner is also entitled for a hearing. The petitioner can raise all grounds against the proposals under Forest Act or under the Wild Life Protection Act before the appropriate authorities who would be discharging quasi judicial function, and is bound to give reasons for passing any order. The order to be passed under the Forest Act is also subject to an appellate remedy before the District Court under Section 14 of the Forest Act.

49. Even in the context of the claims of the petitioner on the basis of the provisions of Act 1 of 1908 and Act 26 of 1948, it is up to the petitioners to pursue his remedies/rights flowing under the said Acts before the appropriate forum and the respondents herein are not the appropriate authorities who could deal with any of the claims of the petitioner, under Act 1 of 1908 or Act 26 of 1948. The respondents cannot be restrained from discharging their functions under Forest Act and Wild Life Protection Act when the petitioner/company has not yet taken any proceeding under Act 1 of 1908 and Act 26 of 1948. I have already held that in the absence of necessary parties, it is not possible to go into the claims arising under the said two Acts.

W.P.Nos.4318 to 4320 of 1995

50. In these writ petitions, the attempt of the petitioners is to question the seizure of the firewood which were effected by the Forest officials under various Mahazars and seeking for direction to release the firewood.

51. In this context as already stated, though the Forest officials may not be entitled to exercise their rights under Chapter II and Chapter III of the Forest Act, without issuing declaration under Section 16, the Government has certainly the right to control the transit of timber as provided under Chapter V of the Forest Act and also in terms of the judgment of the Supreme Court mentioned above and the terms of the lease deed. The power of the Government to do so, is not dependant only on the lands being declared as reserved forest under Chapter II of the Act. Therefore, any action taken by the respondents in the context of the transit of timber would be an issue to be considered on the merits and facts of the charges framed or

to be framed against the petitioners and cannot be gone into in a writ petition. In the event of any such proceeding being initiated it is up to the petitioners to pursue their remedies as provided under the relevant provisions and the petitioners cannot seek for any pre-emptive relief in the said context. In fact, it was also brought to the notice of the Court that the petitioners had been subjected to certain proceedings before the Criminal Court and the petitioners are free to pursue their defence/remedies as may be open to them in the said context.

52. Therefore, these writ petitions are also liable to be dismissed.

W.P.No.5093 of 1995:
53. The petitioner has prayed for a declaration that Section 49-A to 49-G of the Tamil Nadu Forest Act are ultra vires the Constitution.

54. The validity of the provisions have already been considered by P.Shanmugam,J. in a batch of Writ Petitions in W.P.Nos.19913 of 1992 etc., praying for a declaration that Sections 42(2), 49-A, 49-B and 4 9(G) of the Tamil Nadu Forest Act are ultra vires. The writ petitions were dismissed by order dated 26.10.1999 upholding the provisions. Therefore, the above writ petition is also liable to be dismissed.

55. An objection was taken by learned Additional Government Pleader to the effect that the judgment of P.Sathasivam,J. in W.P.No.4178 of 1995 dated 5.11.1999, covers the same issues raised in these writ petitions and therefore, the said order would operate as res judicata. I am unable to sustain this contention. The prayer in the writ petition was for a writ of prohibition to restrain the Forest Settlement Officer from exercising his powers in conducting the enquiry under Section 9 of the Forest Act. As could be seen from paragraph No.7 of the order, only two issues arose for consideration. Firstly, whether the Enquiry could be preceded with in the absence of a proclamation under Section 6 of the Act. Secondly, the Tahsildar, who had exercised powers under Section 4(c) of the Act, who is the authority to conduct the enquiry, had filed a counter in the writ petitions and whether it would be reasonable to expect him to conduct a proper enquiry. The learned Judge held on the first point that there has been a proclamation under Section 6 of the Act, dated 15.12.1978 and there was no need for fresh proclamation. On the second point, the learned Judge agreed with the objections on behalf of the petitioner and held that the Tahsildar should consider the issues independently without reference to the counter affidavit filed by him . All other issues raised by the petitioner were left open. Therefore, I fail to understand as to how the said judgment could operate as res judicata. I have also held that the issues relevant for the enquiry under Section 9 are left open and the enquiry should be preceded with. Therefore, I do not find any substance in this objection.

56. My conclusions above are summarised as follows:-
I. The rights of the petitioner if any, under Act 1 of 1908 and Act 26 of 1948 have to be raised and agitated before the forum specified under those Acts and such issues are left open.

II. In the absence of the declaration under Section 16 of the Forest Act, it is not possible for the Government to enforce Chapters II, III and IV of the Act. The roads having been laid by the petitioner and the petitioner is entitled to collect toll for the roads and the respondents cannot prevent the same.

III. Action can be contemplated under Chapter V and in terms of the judgment of the Supreme Court in 1997 (2) S.C.C., 267, and in terms of Section 54 of the Forest Act and also in terms of the agreement between the parties.

IV. Whatever might have been the intention or the expectation of the Government in issuing G.O.Ms.No.183, Forest and Fisheries Department dated 6.3.1976 under Section 18 (1) of the Wildlife Protection Act, 1972 declaring Kalakadu Reserved Forest as a Wildlife Sanctuary, cannot apply to the petitioner's land having regard to the Schedule and the Boundary description appended to the G.O. Further, no declaration has been issued under Section 26-A of the Act. Consequently, action contemplated under the provisions of the said Act, treating the petitioner's land as a sanctuary cannot be sustained. In other respects, the provisions of the Act if any, applicable generally to areas other than sanctuatries and closed areas etc. can be applied to the petitioner's land.

V. Any penal action taken or to be taken against the petitioner shall be subject to the aforesaid conclusions and has to be defended by the petitioner on merits and before the appropriate forum.

VI. The Forest Settlement Officer shall proceed with the enquiry under Section 9 of the Act which is pending with him and conclude as expeditiously as possible not later than six months from the date of receipt of a copy of this order.

VII. Consequently, while W.P.No.1770 of 1995 stands allowed, all other writ petitions namely, W.P.Nos.2208, 4318, 4319, 4320 and 5093 are dismissed subject to the observations as above. No costs.

57. While parting with these cases, I cannot fail to refer to the lethargic attitude exhibited by the Forest Department/officials having caused unnecessary delay in implementing the proposals of the Government. There is no use in loudly declaring their intention to implement the provisions of the Forest Act and Wildlife Protection Act and complaining about several commissions and omissions by the petitioners and similarly placed persons and taking inappropriate a'ction without proper statutory backing. The policy of afforestation and preservation of ecology, flora, and fauna are ensured under the said Acts with enormous powers to the Government and even lands which are not already forest or sanctuaries and not at the disposal of the Government, can also be brought under the provisions of both Acts, if the requirements under the Acts are complied with sincerely and promptly and on payment of compensation, if there are sustainable claims. In these cases, there has been no final declaration under Section 16 of the Forest Act, nor under Section 26-A of the Wildlife Protection Act. Even in G.O.Ms.No.183 dated 6.3.1976, if the object was really to include the petitioner's land as a

sanctuary, there is a gross negligence in not taking due care in describing the Schedule and the Boundary description in a proper manner. There is also no justification for keeping the enquiry under Section 9 of the Act before the Forest Settlement Officer pending without disposal till now for several years. Interim order, if any, granted shall stand vacated and all pending WPMPs will stand closed.

Index: Yes.
Internet: Yes.
sai/-

To
1. The Deputy Director,
Project Tiger,
Mundanthurai
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Ambasamudram,
Nellai Kattabhoman District.

2. The Field Director (Project Tiger),
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